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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 37 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIGVIJAY TILES & POTTERIES LTD

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 37 of 1988
MR HM TALATI for Petitioner No. 1
MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following question is referred for our opinion in respect of assessment year 1979-80:-

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in holding that disallowance of Rs.11,237/- being interest levied u/s.201 of the Income-tax Act was correctly disallowed ?"

2. The assessee is a limited company and it raised large amounts of borrowing on which interest was credited and claimed by way of expenditure. The assessee was also required to deduct the tax from the interest payable on borrowings. The assessee did not make payment of the tax deducted at source from the interest payable to the depositors and, therefore, under sec. 201 (1A) of the Income Tax Act, 1961 (hereinafter referred to as `the Act') interest was charged by the Department. The claim made by the assessee for deduction of interest of Rs.11,237/- was accordingly disallowed by the Income-tax Officer which disallowance was confirmed by the CIT (Appeals) and also by the Tribunal. Hence, this reference at the instance of the assessee.

3. We have heard Mr HM Talati learned counsel for the assessee and Mr BB Naik learned counsel for the revenue.

4. At the hearing, our attention is invited to the decision of the Apex Court in Bharat Commerce & Industries Ltd. vs. CIT, (1998) 230 ITR 733 and also to the decisions of the Madras High Court in CIT vs. Chennai Properties & Investment Ltd., (1999) 239 ITR 435 and of the Bombay High Court in Ferro Alloys Corporation Ltd. vs. CIT, (1992) 196 ITR 406.

5. In Bharat Commerce & Industries Ltd. vs. CIT (supra), the Apex Court has laid down the principle that under the Income Tax Act, the payment of interest is inextricably connected with the assessee's tax liability. If income tax itself is not a permissible deduction under section 37, any interest payable for default committed by the assessee in discharging its statutory obligation under the Act cannot be allowed as deduction. That was, of course, a case pertaining to interest levied for failure to pay advance tax under section 215 of the Act. Following the aforesaid principle, the Madras High Court has held that interest paid under section 201 (1A) for failure to deduct tax at source and remit to the

Income-tax Department is not deductible as business expenditure. The same view is taken by the Bombay High Court in Ferro Alloys Corporation Ltd.. vs. CIT (supra) following its own decision in two previous references and also the decision of the Delhi High Court in the case of Bharat Commerce and Industries Ltd., 153 ITR 275 which came to be confirmed by the Apex Court in the aforesaid decision in 230 ITR 733.

6. We are in complete agreement with the aforesaid view of the Madras and Bombay High Courts that interest paid under section 201 for failure to deduct tax at source is not deductible as business expenditure because payment of income-tax itself is not deductible as business expenditure as held by the Apex Court in the case of Bharat Commerce & Industries Ltd. vs. CIT (supra).

7. In view of the above discussion, our answer to the question referred by the Tribunal is in the affirmative i.e. in favour of the revenue and against the assessee.

8. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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